IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4595 OF 1984

Shripad Yeshwant Kulkarni,)
Occupation service, Modern)
College of Arts, Science and)
Commerce, Shivaji Nagar, Pune)
- 411005.) .....Petitioner.

V/s

Shri Mahadeo Shankar Jadhav)
(Since deceased, through his LRs)
1(i) Kuber Mahdeo Jadhav,)
Age-60 Years, Occ: Agriculture,)
R/o.- Yenki, Taluka Mohol,)
District Solapur.)
Presently r/o Telgaon, Taluka)
Uttar, Solapur.)
)
1(ii) Smt. Bhagirathi Mahadev)
Jadhav, (widow) Age - 79 Years,)
Occ. Agriculture, R/o. Telgaon)
Taluka Uttar, Solapur, District)
Solapur, Maharashtra)
)
2. The Maharashtra Revenue)
Tribunal, Pune.) .....Respondents.

Mr. T.D. Deshmukh for the Petitioner.

Mr. S.M. Sabrad for Respondent Nos 1(i) & 1(ii).

CORAM: V.M. KANADE, J.
DATE : 2nd August, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the petitioner

and the learned Counsel appearing on behalf of respondents.

2. The petitioner is challenging order passed by the authorities below whereby the petitioner's application for possession of the land which he has filed under section 29 read with section 14 and section 25 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "B.T. & A.L. Act") was rejected.

3. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

4. The Petitioner is a landlord of the suit land and respondents are tenants. The disputed property pertains to land bearing Survey No.12 admeasuring 34 Acres 25 Gunthas and it was re-numbered after consolidation as Gat No.28/1. The original landlord Shri Yeshwant Kulkarni died in 1940, leaving behind his wife Annapurnabai Y. Kulkarni who became the absolute owner of the said property. The landlord did not have any issue from the said wife. On 07/10/1947, Annapurnabai adopted Shripad, son of Narsinha Pralhad Kulkarni i.e the petitioner herein. In 1948, original respondent was put in possession of the suit property as a tenant by Annapurnabai by

executing registered rent note at agreed rent of Rs 300/- per month. At that time, the petitioner herein was a minor. It is the case of the petitioner that on 24/08/1959, notice was issued to the original respondent by natural brother of the petitioner viz. Shamrao Kulkarni and rent was demanded for the period 1958-59. It is the case of the Petitioner that, again, by notice dated 05/08/1961, Shamrao, natural brother of the petitioner demanded rent for the period of 1960-61. In the meantime, on 02/06/1962, petitioner attained the age of majority. On 15/08/1962, again, notice was issued by Shamrao to the original respondent, demanding rent for the period of 1961-62. Thereafter, again, notice of termination was issued on 20/11/1962 by Shamrao to the original respondent for and on behalf of the petitoner as a power of attorney holder of the petitioner. Thereafter, on 01/06/1963, application was filed by the petitioner under section 14 of the B.T. & A.L. Act before the Mamlatdar, Taluka North Solapur for recovery of possession of the said land. In the said application, statement of Annapurnabai, mother of the petitioner, was recorded in which it is stated that she has received rent from the respondent and that she had issued rent receipts for the same. Both parties adduced other evidence on record. The Mamlatdar was pleased to reject the application of the petitioner by judgment and order dated

17/06/1966.

5. Being aggrieved by the aforesaid order, petitioner preferred an appeal on 24/06/1968 vide Tenancy Appeal No.342 of 1967 and the Collector was pleased to remand the matter back to Mamlatdar. Thereafter, the matter was heard again and the Mamlatdar directed the original respondent to deposit the arrears of rent, if any, and accordingly the original respondent deposited an amount of Rs 3,800/- towards the rent from 1963 onwards. Thereafter, again, by order dated 22/07/1975, Mamlatdar was pleased to reject the application of the petitioner. The petitioner preferred an appeal being Tenancy Appeal No.11 of 1976 which was also dismissed by the Assistant Collector, Solapur by order dated 09/03/1977. Against this order, petitioner preferred a revision before the MRT, Pune which was also dismissed by order dated 02/02/1984. Against the said orders, petitioner has preferred this writ petition.

6. This writ petition was heard by S.S. Nijjar, J. when the Counsel for the original respondent did not appear and the matter was heard and by order dated 21/09/1986, the Court was pleased to allow the writ petition. Review application filed by the original respondent was also rejected. The SLP was preferred by respondents in the Apex

Court which was allowed and the judgment and order passed by this Court was set aside by the order dated 06/04/2004 passed in Civil Appeal Nos. 1752-1753 of 1999. The Apex Court directed this Court to decide the matter afresh. The Apex Court passed the following order:-

"O R D E R

The tenant is in appeal questioning the validity and correctness of the judgment dated 12th September, 1997 and order made in review application dated 21st September, 1998 by the High Court reversing the order passed by the Maharashtra Revenue Tribunal dated 2nd February, 1984.

Before the High Court, the appellant remained unrepresented. The High Court, after narrating the facts of the case, allowed the writ petition holding that the claim of the minor landlord could not be defeated on a technical ground that notice was not issued by proper person to the tenant. The question, whether the tenant was in default for three years, namely, 1959-60, 1960-61 and 1961-62 was not considered.

The learned counsel for the appellants urged several contentions before us. The learned counsel for the first respondent made submissions supporting the impugned judgment.

In our view, having regard to the concurrent finding of fact recorded by the Tahsildar, sub-divisional Officer and the Maharashtra Tribunal, the High Court ought to have examined the merits of the contentions having regard to the facts of the case and the evidence placed on record, including the question of law that arose for consideration between the parties, whether issuing of notice by the natural brother of the landlord after adoption of the landlord was merely a technicality or it affected the very validity of the notice. Unfortunately, the appellant remained unrepresented. Thus, looking to all aspects, we are of the view that the High Court has to consider the writ petition afresh on merits dealing with all the contentions raised by the parties. In this view, the impugned judgment and the order made in the review application are set aside. The writ petition is remitted to the High Court for disposal afresh in accordance with law, in the light of what is stated above.

The civil appeals are, accordingly allowed.

No costs."

7. Mr. Deshmukh, the learned Counsel appearing on behalf of the petitioner submitted that all the authorities below had erred in holding that notices were illegal being issued by the natural brother of the petitioner and not by the natural guardian i.e. Annapurnabai. He submitted that perusal of section 14 clearly indicated that merely intimation was to be given by the landlord about the default which was committed by the tenant. He submitted that, therefore, it was immaterial whether the intimation was given by the landlord or by any one on his behalf. He submitted that there was no dispute that the intimation was, in fact, given within three months from the date of default, consecutively for a period of three year and, therefore, requirement of section 14 of the said Act had been complied with. He submitted that after compliance of the requirement under section 14 (1), the petitioner had given notice of termination of the tenancy under sub-section (2) of section 14 and this was admittedly given by the power of attorney holder of the petitioner. Since, by the time this notice of termination was given, petitioner had attained majority and had executed power of attorney in favour of Shripad, his natural

brother. The learned Counsel for the petitioner submitted that once the notice of termination having been issued under sub-clause (2) of section 14, benefit under section 25(1) was not available to the tenant in view of the express provision of sub-clause (2) of section 25. He submitted that since it was an admitted position that the intimation was received by the tenant within the prescribed period and he, having failed to deposit the said amount within the requisite period, the benefit under section 25(1) could not have been given to the respondent. He submitted that the lower authorities had erred in granting benefit to the respondent under section 25(2).

In support of the said submission, the learned Counsel for the Petitioner relied upon the judgment of this Court in the case of Smt. Josephine Mathew Concessio Vs.Sowr Langdya Kini reported in **1964 (Vol.LXVI)194.** He also relied upon the judgment of the learned Single Judge of this Court in the case of Shaniwar Dhondu Dharnekar Vs. Prabhavati Chandrakant Patange reported in **1979 Mh.L.J. 836**. He submitted that, therefore, restricted meaning should not be given to the word 'intimation'. He submitted that dictionary meaning of the said word means to make known or communicate by means however indirect. He submitted that, therefore, the section

contemplated intimation to the tenant about default which was committed by the tenant. He submitted that, thus, in this case, there is a clear case of default which was admitted by the respondents - tenants herein. He submitted that it was not open for the respondents - tenants now to recede from the earlier statement and claim that they had paid the rent.

8. Mr. Sabrad, the learned Counsel appearing on behalf of respondents - tenants, however, submitted that the intimation given by the brother of the petitioner could not be said to be legally proper and correct. He invited my attention to section 7 of the Hindu Minority and Guardianship Act, 1956 and submitted that adoptive mother became the natural guardian of adopted son and, as such, Annapurnabai could have given intimation on his behalf. He further submitted that, in fact, it had come on record that the rent had been paid to Annapurnabai regularly from time to time who had issued receipts for the payment of the rent. He submitted that, initially, though the rent was Rs 300/-, after the said B.T. & A.L. Act was amended, the rent was reduced and was fixed at 5 times the assessment. He submitted that, therefore, there is no default committed by the respondents herein. He submitted that tenancy

cannot be terminated on the ground of default unless the landlord has given three months' notice in writing, informing the tenant of his decision to terminate the tenancy and, provided, within that time, the tenant has failed to make the payment of rent as demanded. Section 25 lays down the relief which could be claimed by the tenant for termination of tenancy on the ground of non-payment of rent. Sub-clause (1) of section 25 states that though there is non-payment of rent by the tenant and on that ground application is filed by the landlord for eviction of the tenant, even then, Mamlatdar can call upon the tenant to tender to the landlord rent in arrears together with the cost of proceedings within three months from the date of the order and if this order is complied with then the order of termination can be set aside by Mamlatdar. Sub-clause (2) of section 25, however, states that this concession which is given to the tenant shall not be available to him if the tenant has failed to pay rent for any three years and that the landlord has given intimation to the tenant to that effect.

9. The B.T. & A.L. Act is a comprehensive piece of legislation which provides security of tenure to all classes of tenants and it also fixed a minimum level of rent payable. It is therefore essentially a

beneficial piece of legislation intended to give protection to the actual tiller of the land. Section 14 & section 25 read with section 29 of the B.T. & A.L. Act is therefore an exception to the general rule and the said section 14 lays down the grounds on which tenancy of tenant can be terminated. In respect of the non-payment of rent, again, there is a further provision provided under sub-section (1) of section 25 which gives further protection and opportunity to the tenant to make payment, though he has committed default after the order to that effect is passed by Mamlatdar and if the said order is complied with then effect of termination of tenancy ceases and the tenant can continue to cultivate the land as tenant. However, sub-clause (2) of section 25 lays down that the benefit under sub-section (1) of section 25 shall not be available to such tenant who fails to pay rent for any three years and further, provided, that the landlord has given intimation to the tenant to that effect. In this context, therefore, the word 'intimation' which is used in section 14 sub-clause (1)(a) and which is similarly used in section 25 sub-clause (2) will have to be construed to mean intimation given by the landlord or a person who is lawfully authorized to give such intimation. If such an interpretation is not given to the said word, it would mean that the benefit which the legislature had sought to give to the tenant under

section 25 sub-clause (1) would be rendered nugatory if intimation by unauthorized person is permitted to be given. It is no doubt true that the word 'intimation' has been defined in dictionary to mean communication either directly or indirectly. This, however, cannot mean that the legal effect which will follow pursuant to such indirect communication would be the same legal effect as is intended by section 14 and section 25 of the said Act. Therefore, in my view, submission made by the learned Counsel appearing on behalf of the petitioner that the intimation given by natural brother of the petitioner should be construed as an intimation within the meaning of section 14(1)(a) and section 25 sub-clause (2) of the said Act cannot be accepted. The judgment on which the reliance is placed by the petitioner in the case of Smt. Josephine Mathew Concessio (supra) would not apply to the fact of the present case. In the said case, Division Bench of this Court was called upon to construe the meaning of the words "to that effect" which are found in section 25(2) of the said Act and, while doing so, the Division Bench held that it was not necessary for the landlord to state in the intimation that he had intended to or had decided to terminate the tenancy and that it was sufficient if the landlord had intimated to the tenant that he had failed to pay the rent. The ratio of the said judgment, therefore, will

not apply to the facts of the present case as, in the present case, the point which is sought to be argued on behalf of the petitioner is that the intimation by natural guardian of the petitioner was proper intimation within the meaning of section 14(1)(a). So far as the other judgment on which reliance is placed by the learned counsel appearing on behalf of the petitioner viz in the case of Shaniwar Dhondu Dharnekar (supra) is concerned, even the ratio of the said judgment would not apply to the facts of the present case. The learned Counsel appearing on behalf of the petitioner has relied upon the following observations made by the learned Single Judge in para 6 of the judgment in the case of Shaniwar Dhondu Dharnekar (supra) which reads as under:-

> "6.....What is contemplated by sub-section (2) of section 25 is that it is obligatory on the part of the landlord to give intimation to the tenant of his default within the period of three months on each default. The dictionary meaning of the word 'intimation' is "to make known, announce, notify by legal process, to make known or communicate by any means however indirect, to signify, to indicate, to imply, to suggest, to hint at". From this

> dictionary meaning, it does not appear that the service is necessary of such intimation on the person concerned. By the Legislature, the landlord is directed to signify, to notify, to announce that the tenant has committed defaults in payment of rent or compensation....." (emphasis supplied).

The said observation also will not be of any assistance to the Petitioner since, in the said case, what has been observed by the learned Single Judge is that as per the meaning of the word 'intimation' as defined in the dictionary, it was not necessary that such an intimation should be on the person concerned. In the present case, there is no dispute that the said intimation was communicated to the tenants - respondents herein. The principal issue is: whether the intimation could have been issued by the brother of the petitioner who was his natural brother. In my view, therefore, the ratio of the aforesaid two judgments would not apply to the facts of the present case. In the present case, it is an admitted position that the natural guardian of the petitioner viz his mother who had taken him in adoption had given the land on rent to the respondents - tenants. She had, in turn, issued receipts in respect of the payment of the rent from time to time to the tenants which have been produced on record and

were exhibited. In the face of the receipts being issued by the natural guardian, a mere intimation by third party not connected with the suit property can never be construed to be an intimation within the meaning of section 14(1)(a) or section 25(2) of the said B.T. & A.L. Act. The natural mother of the petitioner during the period when the petitioner was a minor having issued the rent receipts and having given evidence before authorities that she had received rent, there was no occasion for the tenants - respondents herein to have taken any cognizance of such notices being issued by the natural brother of the petitioner. Consequently, in view of the aforesaid, notices which were issued by the natural brother of the petitioner were illegal and could not be construed to be notices under the aforesaid sections and, therefore, the petitioner, could not, on the basis of these notices which were per se illegal, would have taken out proceedings for recovery of possession under section 29 of the B.T. & A.L. Act. In my view, therefore, all the authorities below were justified in dismissing the application of the petitioner for recovery of possession on the ground of default in payment of rent for a period of three years.

10. Further, since it has been held that notices issued by the brother of the petitioner were illegal, no action could have been taken by the

authorities for evicting the respondents from the suit land. There is no reason, even otherwise, to interfere with the concurrent finding by all the three authorities below. In the result, there is no merit in the submissions made by the learned Counsel for the petitioner.

11. Petition is accordingly dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs. I am informed that during the pendency of this Petition, proceedings initiated under section 32-G by respondents - tenants after the petitioner attained majority have remained pending. Tenancy authorities are directed to proceed with the said proceedings and decide the same as expeditiously as possible.

(V.M. KANADE, J.)